IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

CMA.No. 115 of 2002()

AS.79/1996 of ADDL.SUB COURT,KOTTAYAM
OS.203/1992 of MUNSIFF COURT, VAIKOM
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APPELLANT: RESPONDENT/DEFENDANTS 1 TO 4
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1. SABU P. DAS, S/O.DASAN, AGED 26,
RESIDING AT PARAPPALLI THARAYIL, ULLALA KARA,
THALAYAZHAM VILLAGE.

2. RAMESH, S/O.DASAN, AGED 24,
RESIDING AT PARAPPALLI THARAYIL, ULLALA KARA,
THALAYAZHAM VILLAGE.

3. USHAKUMARI, D/O.PONNAMMA, AGED 33,
RESIDING AT PARAPPALLI THARAYIL,
ULLALA KARA, THALAYAZHAM VILLAGE.

4. SHEELA DAS, S/O.PONNAMMA, AGED 27,
RESIDING AT PARAPPALLI THARAYIL,
ULLALA KARA, THALAYAZHAM VILLAGE.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL

RESPONDENTS: APPELLANTS & RESPONDENT NO.5, 5TH DEFENDANT
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1. S.N.D.P.SAKHAYOGAM NO.117 ULLALA,
THALAYAZHAM VILLAGE.

2. ITS PRESIDENT M.P.MURALEEDHARAN,
S/O.PADMANABHAN, AGED 29,
RESIDING AT MUTTOORUTHIL HOUSE,
ULLALA KARA, THALAYAZHAM VILLAGE.

3. ITS SECRETARY, RATNA KUMAR,
S/O.NARAYANAN, AGED 40, RESIDING AT
PALLIPPARAMBIL THARA, ULLALA KARA,
THALAYAZHAM VILLAGE.

* 4. SUBHA DAS,. S/O.DASAN, AGED 20,
RESIDING AT PARAPPALLI THARAYIL,
ULLALA KARA, THALAYAZHAM VILLAGE.

(4th RESPONDENT IS REMOVED FROM THE PARTY ARRAY
AS PER ORDER IN I.A.No.2302/2003 DATED 20.11.2003)

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

C.M.A.No. 115 of 2002

Dated this the 5th July, 2007.

J U D G M E N T

Defendants 1 to 4 in O.S.No.203/1992, on the file of the Munsiff's Court, Vaikom, are the appellants herein. This appeal is filed against the judgment of the Lower Appellate Court, by which,it set aside the decree and judgment passed by the Trial Court, and remanded the matter for fresh disposal.

2. The short facts necessary for the disposal of the appeal are as follows. The S.N.D.P. Sakhayogam No.117 Ullala, represented by its President, filed the suit against the appellants for a mandatory injunction to remove certain structure put up by the defendants in Item No.3 of the plaint schedule; for a declaration of title of the plaintiffs over that property and recovery of the same. There was also a prayer for a decree of permanent prohibitory injunction restraining the appellants from making any construction in Item No.2 & 3 or trespass into the 4th item; and also for recovery of mesne profits at the rate of Rs. 557.70, from the date of suit till the date of recovery.

3. The plaintiff was the S.N.D.P. Sakhayogam No.117 Ullala, represented by its President. It was averred that the defendant's predecessor was allowed to construct a structure in Item No.I of the plaint, for the purpose of conducting a tea shop. He executed a lease deed in respect of 2 cents of property. Subsequently the original tenant died and his heirs were conducting the tea shop. It was also averred that on that property, 215 Square links of property was acquired by the Government. The remaining property was Item No.2. Item No.4 having an area of 70 cents, was purchased by the plaintiff on 6.7.1998. During January 1990, the legal heirs of the deceased Original tenant trespassed into 1.965 Square cents of land, annexed the same with the lease hold property and made additional constructions to the building situated in the property purchased by the plaintiff. It was averred that the widow of the Original lessee also died. Defendants 1 and 2 are the sons of the Original tenant. It was also averred that several demands were made for surrender of the land, but defendants were not willing to surrender the trespassed area. Hence, the suit.

2. Defendants filed a written statement contending that the suit as framed was not maintainable. It was averred that the President alone has no right to maintain an action representing the Sakhayogam. It was also averred that to institute a suit in respect of the immovable property, there must be a decision by the Sakhayogam, and in the case at hand, no decision was taken in the General body. The suit was filed as an experimental one and President alone had no locus standi to file the suit. It was averred that the predecessor-in-interest of the defendants took two cents of land on ground rent and put up a building. The trespass alleged was denied. It was contented that in the year 1966 itself, the present building was constructed and started conducting the tea shop. It was contented that even if the plaintiff had any title, the same was lost by adverse possession and limitation. The Trial Court, after considering the pleadings and evidence found that the plaintiffs were not entitled to get the decree of injunction or the relief of recovery, and dismissed the suit. Challenging that decision, plaintiffs filed A.S.No.79/1996.

3. The appellate court found that the President alone was not competent to file a suit. But it was held that since no issue on that point was raised and considered, the matter had to be remanded to the Trial Court for raising such an issue, and for passing appropriate orders. The Lower Appellate Court further held that the counsel appearing for the defendants had conceded that the finding of the Trial Court regarding the adverse possession and limitation is an wrong preposition of law and unsustainable. The Lower Appellate Court did not enter into any finding regarding the limitation and took a view tht such an issue does not arise for consideration, and remanded the matter. Challeging that judgment, the defendants have filed this appeal.

4. The substantial question of law arising for consideration in this appeal is whether the suit as framed was maintainable. The plaintiff was described as S.N.D.P. Sakhayogam No.117 Ullala represented by its President. It is true that subsequently in the year 1995, three more persons were impleaded as Additional plaintiffs. But the plaint was verified and signed by the then President. The suit was instituted by the President alone on

17.6.1992. In the written statement filed by the defendants, it was very specifically contented that the person who filed the suit was incompetent to file the suit. It was also averred that there is no mandate by the General Body to file such a suit.

5. The subsequent President was examined as PW.2. In page 18 of his deposition, he had admitted that as per the bye law, the President alone was not competent to file a suit. There is absolutely nothing on record to show that General Body had passed any resolution authorising the President to verify the pleadings and sign the plaint. The subsequent addition of parties will not cure the initial defect. Even before the appellate court, the plaintiffs did not produce any resolution passed by the General Body. So, the material on record clearly shows that the person who verified the plaint was not competent to verify the same. The person who filed the suit has no locus standi to file such a suit. Since the suit is not maintainable, it is not necessary to consider any other issue arising for consideration. Hence, finding on all those issues are set aside and left open to be decided in appropriate proceedings.

In the result, the appeal is allowed. The judgment passed by the Lower Appellate Court, remanding the suit back to Trial Court, is set aside. The appeal is dismissed. The decree dismissing the suit passed by the Trial Court is restored, but after vacating the findings on all issues, except the one regarding maintainability.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

C.M.A.No. 115 of 2002

J U D G M E N T

Dated:5th July, 2007.